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Wither Criminal Justice?

An Argument for a Reformed Discipline

Matthew B. Robinson

ABSTRACT

The American criminal justice system fails to achieve justice, reduce crime, and provide equal protection to Americans regardless of their social class, race, and gender. But, criminal justice as an academic area of study has become a popular and fast growing liberal arts major in the United States, churning out tens of thousands to work in the criminal justice system. Given the demonstrable harms caused by criminal justice, which are suffered disproportionately by the least powerful people, academic criminologists and criminal justices have the obligation to promote a reformed discipline. This article briefly summarizes the evidence of bias in the criminal justice system and then turns to how these biases relate to criminal justice as an academic discipline. Using the war on drugs as an example, I argue that the practice of criminal justice as an academic endeavor runs counter to the goal of promoting social justice in America. One of the ironic conclusions of this article is that criminal justice as an academic discipline must get smaller if we are to achieve larger goals of social justice outlined here.

THE STATE OF CRIMINAL JUSTICE

The American criminal justice system is ideally aimed at doing justice and reducing crime. At a minimum, doing justice means that the system should hold the guilty accountable for the harms they commit, but must also be fair and not biased against any particular group. Reducing crime involves reducing harmful behaviors committed with culpability, whether they be committed intentionally, negligently, recklessly, or knowingly (Robinson 2002). The criminal justice system fails to achieve these goals because it does not target the behaviors causing the greatest

physical and financial harms to Americans: it ignores acts of white-collar deviance even though they kill and injure more people than street crime and result in far greater property loss (Simon and Hagan 1999). Criminal justice serves the limited interests of the powerful, both in what it defines as harm and by enacting ineffective crime control policies. Acts of street crime thus pervade the media and our consciousness, legitimating beliefs that the poor are a threat and increasing the calls for more punishment (Reiman 2001). The unprecedented incarceration boom since the early 1970s has had little effect on crime, but has kept the focus of our system squarely on relatively harmless street crimes such as drug possession and use (Blumstein and Wallman 2000).

Criminal justice system activity most affects poor people and minorities, and recently the group most likely to suffer at the hands of the criminal justice system is poor women of color (Walker, Spohn, and DeLone 2000). Drug offenses are especially a problem because many relatively small time and first time offenders are sentenced to long mandatory prison terms for failing to provide useful information to prosecutors. Many of the lower level drug offenders with the least to offer prosecutors are women.

American media institutions add to stereotypes about crime and criminal justice by focusing on the most violent, bizarre, and random types of crime in America (Kappeler, Blumberg, and Potter 2000). The media, who are largely for-profit institutions owned by wealthy corporations (Bagdikian 2000), serve the interests of the wealthy and powerful members of society by providing reports about crime and criminal justice that lack critical context. The media also give little attention to acts of white-collar deviance, even though these acts are much more damaging to society than common street crimes.

Given the biases of the criminal law and media institutions, America's mechanisms of enforcement and punishment are also biased, not because of bad police officers and prosecutors (although they clearly exist), but instead because of "innocent bias" from carrying out bad law. The results are police profiling based on fallacious stereotypes of dangerousness (Kennedy 1997); a disproportionate location of police in America's inner-cities; biases in the bail process, in plea bargaining, and in jury selection; long sentences for relatively minor crimes such as drug offenses; and the administration of the death penalty (Beckett and Sasson 2000; Bohm 1999; Blumstein and Wallman 2000; Kappeler, Blumberg, and Potter 2000; Merlo and Benekos 2000). Meanwhile, the increased use of incarceration is not tied to crime rates or effective at reducing crime (Austin and Irwin 2001; Sherman, Gottfredson, MacKenzie, Eck, Reuter, and Bushway 1997).

American crime problems are typically created and/or used around election time as political issues, so criminal justice policy is often short-sighted and poorly planned (and at times reactive and altogether unplanned). Criminal justice policy driven by short-term thinking and unplanned change results in inefficiency, wasted resources, and failure. Consistent with the great majority of criminologists and criminal justice scholars, Muraskin (1999) notes that crime problems will be solved "not by the building of bigger and better cells, but through education, alternative programs, and (by) stopping problems before they begin . . . Violence is a symptom of other

problems and we must deal with those problems” (p. 436). According to Walker (1998: xxi), most American crime control policies simply do not work: “they are nonsense.”

Currently, criminal justice policy seems to be made based on “subjective, ‘in the head’ decisions, which are subject to unreliability, low validity, bias, and much variability among decision makers” (Gottfredson 1999: 443). As an alternative, planned change (see, e.g. Welsh and Harris 1999) is spear-headed by change agents who have specifically thought about a problem and investigated it thoroughly. Who better than criminologists and criminal justices to be these change agents?

THE STATE OF THE DISCIPLINE

Despite policy failures, criminal justice educational programs turn out tens of thousands of students each year, making criminal justice “one of a campus’ relevant, contemporary, and highly marketable degree options” (Flanagan 2000: 5). Indeed, for many campuses, criminal justice is a cash cow. Students flock to our major as background for working in the criminal justice field as police officers, lawyers, probation officers, correctional guards, juvenile justice personnel, etc – jobs that are perceived as exciting, and with some ability to help others (Flanagan 2000). There are now more than 125,000 students majoring in criminal justice in the United States (Flanagan 2000), at least half of whom are specifically interested in going into law enforcement (Krimmel 1999).

Criminologists and criminal justices have become little more than producers of criminal justice employees. Figure 1 illustrates that as our nation has shifted its crime reduction approach to “get tough” mechanisms (meaning we are using more of the same – more police, more prisons, more jails, and more executions to reduce crime), the result is more jobs for criminal justice majors and thus more criminal justice students for the discipline.

We are, in essence, a facilitator of a larger, more intrusive and destructive criminal justice system. Perhaps beginning when the 1967 President’s Commission on Law Enforcement and the Administration of Justice concluded that “the quality and effectiveness of American criminal justice would be decisively improved by upgrading the educational preparation of its practitioners” (Flanagan 2000: 4), more people desired criminal justice education. And so most police officers in the United States today have attended *some* college (Carter and Sapp 1990). Over the past thirty years, criminal justice has moved from a mostly vocational discipline to one that is rich, diverse, and truly academic. There are now more than 1,000 departments in the United States offering baccalaureate degrees in criminal justice (Krimmel 1999).

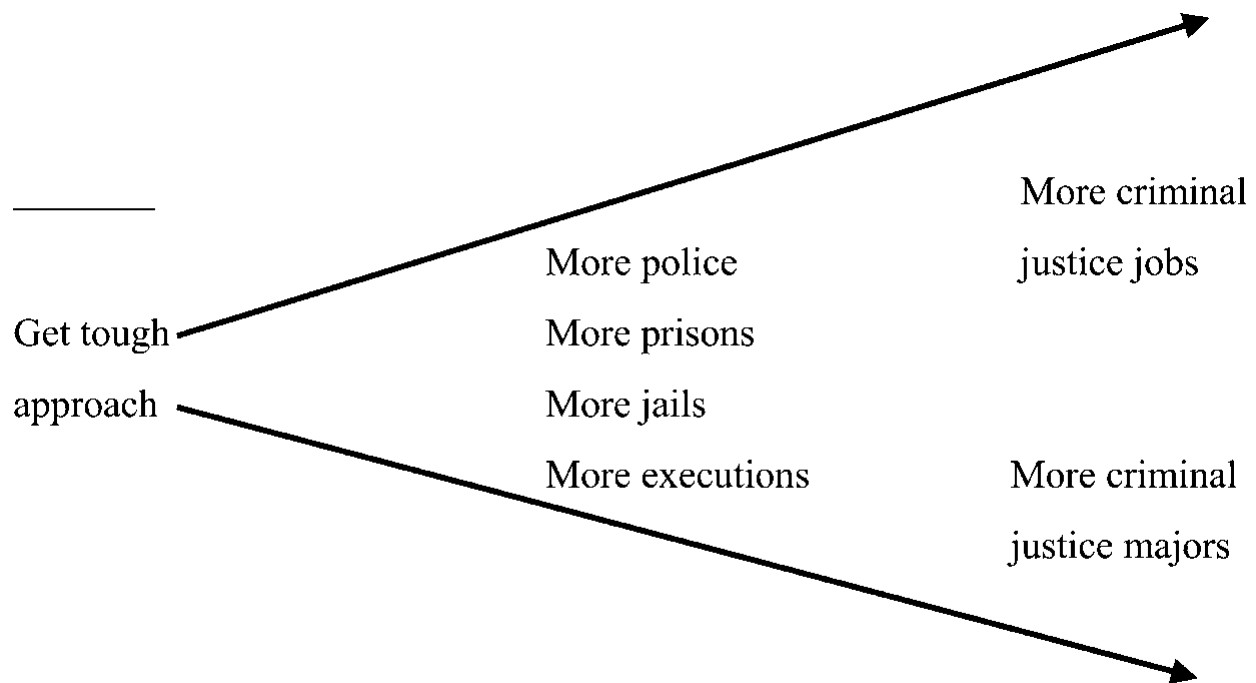


Figure 1. Effects of recent criminal justice practice on the criminal justice discipline.

Criminal justice is a multi-disciplinary academic discipline with its roots in sociology, psychology, political science, and other social sciences (Barak 1998). Some see the multi-disciplinary nature of criminal justice as a strength. For example, Flanagan (2000) notes that because we focus on a key problem facing society (crime) that is caused by factors in individuals, their groups, communities, and societies, we must use the tools of various academic disciplines to fully understand crime; indeed, criminal behavior, its etiology, and its control is relevant for many disciplines.

The multi-disciplinary nature of criminal justice also makes developing a consensus about the issues we study very difficult, however. Criminal justice as a discipline is highly splintered, scattered throughout different organizational structures in the nation's institutions of higher education. Rarely do our various branches *integrate* knowledge (Barak 1998; Marenin and Worrall 1998), even at numerous regional, national, and international conferences. At these conferences, thousands of papers are presented each year, most of which are poorly attended and not widely received. (This says nothing about the disciplinary conferences where crime-related research is presented and discussed, for example, the American Sociological Association, the American Psychological Association, etc.)

Academic journals proliferate, making it impossible to stay fully informed about more than one (some may even say one) specialization within criminal justice. Miller (1995) compares the study of human behavior to an uncoordinated accumulation of car parts. Some study one part, others study another part, and still others study other parts; but few study the whole car. Thus, criminal justice can be seen as a "tragedy" as an academic discipline; rarely do our graduates

ask philosophical questions about the discipline as a whole or question American criminal justice practice (Sullivan 1994).

Further, many criminal justice faculty are expected to pursue grants to bring money into their educational institutions. These grants are funded mostly by government agencies with a vested interest in maintaining the status quo. The goals of grantees are to demonstrate, for example, which criminal justice practices are most effective at preventing recidivism. Rather than questioning the very practices of police, courts, and corrections and the “war on crime” approach as a whole, grant-funded studies often simply end up suggesting small to moderate changes in how criminal justice components operate.

WHERE TO GO FROM HERE: IMPLICATIONS FOR THE CRIMINAL JUSTICE DISCIPLINE

Many of the impediments to achieving *social justice* exist within the discipline of criminal justice. Social justice is perhaps the broadest conception of justice; it is bigger than the criminal justice system and exists when all forms of culpable harmful behaviors are abhorred, opposed, denounced, combated, and abolished (Barak and Henry 1999: 152). It exists when all people are treated equally under the law and when all forms of culpable harm are resisted.

The criminal justice system is not necessarily aimed at achieving social justice, nor must it be. According to Arrigo (1999: 9) the goals of the criminal justice system (to do justice and reduce crime) may be completely separate and distinct from the goal of achieving social justice. In fact, the way the criminal justice system is organized may actually make it harder to achieve social justice (Barak and Henry 1999). My argument is that one goal of the criminal justice system should be to achieve social justice – i.e., “to advance principles of fairness, equity, reasonableness, and so forth, through police, court, and correctional practices” (Arrigo 1999: 253). The criminal justice system must not only seek to achieve justice as an outcome and reduce crime, but it also must not ever be allowed to interfere with the realization of social justice. The criminal justice system must, in its operations, remain anchored in “fairness, equity, proprietorship, due process, and so forth” (Arrigo 1999: 9) or social justice will not be possible.

Over the past three decades, the American criminal justice system has shifted its emphasis to a get-tough approach, resulting in less social justice for more people. The criminal justice system employs more than 2 million people in police, courts, and corrections, and spends more than \$100 billion per year to “fight” crime (Robinson 2002). This makes criminal justice as an academic discipline valuable for students because many jobs are readily available. Yet, the discipline has not done enough to counter the destructive effects of the growing crime control industry. We know better than anyone else why our current efforts of mass incarceration will ultimately fail, despite possible limited short-term benefits in crime reduction (Blumstein and Wallman 2000). There appears to be little hope on the horizon of actually using “what works” to prevent crime (Sherman, Gottfredson, MacKenzie, Eck, Reuter, and Bushway 1997). Below I use the war on drugs as an example.

An Example: Harm Reduction and the War on Drugs

Consider the main elements of America's drug war: crop eradication efforts, interdiction efforts, and street-level drug enforcement (Kappeler, Blumberg, and Potter 2000: 159). Each of these activities is practiced by criminal justice agencies to eliminate *the enemy*. Best (1999: 144) explains the value of the war metaphor:

Declarations of war on social problems are dramatic events: they call for society to rally behind a single policy, against a common foe. Typically, the initial pronouncements receive favorable attention in the mass media; the press details the nature of the problem and outlines the efforts designed to wage war against it. Usually, the enemy . . . has no one speaking on its behalf. There is the sense that society is united behind the war effort. Declaring war seizes the moral high ground.

The National Institute on Drug Abuse claims that the U.S. government spent \$59 billion on drug law enforcement and incarceration in 1998. Since 1980, we have spent about \$300 billion on the war on drugs (Merlo and Benekos 2000: 19), and most of the money went to domestic law enforcement at the local and state levels of government (Gaines, Kaune, and Miller 2000). Meanwhile, domestic social programs have been cut dramatically to pay for the war on drugs, and drug use and abuse have remained relatively stable for the past 10 years (Robinson 2002). In other words, the drug war is not being won. Instead, when law enforcement agencies invade a neighborhood or community to interfere with drug activity, any combination of three outcomes may result: subterfuge or entrenchment of drug dealers, displacement to other areas, and replacement as others take their place (Robinson 2002).

Police cannot win the war on drugs because most drug use is recreational in nature and is relatively normal behavior for many people. Drug abuse is a medical problem that will not respond to criminal justice intervention. Also consider the irony of policing drugs: police departments in America are profiting from drug seizures and asset forfeitures of drug dealers. American police can seize assets accumulated as a result of illicit drug trafficking and keep a share of the proceeds to fund training and equipment (Gaines, Kaune, and Miller 2001). The benefits of the current arrangement encourage more of the same.

Many scholars are now promoting harm reduction as an alternative to punitive criminal justice. This approach not only advocates reducing harms associated with victimizations from all culpable harms (not just those that are defined as crimes through the criminal law), it also mandates reducing harms produced by current criminal justice policy. Given that America's war on drugs may create more harm than it stops, an alternative to waging war on drugs would be a policy of harm reduction, which "is the emphasis on the reduction of adverse consequences rather than the elimination of drug use" (Nadelmann 1998: 299).

According to Nadelmann, harm reduction is a framework from which policy and program strategies are conceptualized, developed, and implemented with the outcome goal being the reduction or minimization of harm. It is aimed at reducing adverse physical, social, and economic consequences of drug use. A more effective anti-drug strategy would thus be characterized by a focus on harm reduction, no mention of war or war-related rhetoric (which

creates enemies), less criminal justice spending on the war on drugs, and honest and research-informed policy (Jensen and Gerber 1998). Such an approach to reducing harms associated with drug abuse would mean less police involvement, less military involvement, and less convictions and punishment of drug abusers. It will also mean fewer criminal justice jobs.

Criminologists and criminal justices have an obligation to promote a harm reduction approach to reducing criminality and drug use and abuse even though it might be bad for our discipline. To promote social justice, the criminal justice discipline must renounce some of the benefits conferred by the war on crime spending.

The discipline should get smaller, less fragmented, and more focused on changing criminal justice policy. Further, teaching, research, and service must be evaluated not based on archaic, traditional, and useless criteria, but rather based on its impact on the real world. The number of publications of a scholar, for example, will have virtually no effect on criminal justice policy (unless, of course, that scholar's work is read by *normal* people and people who work in the policy realm). Service to local communities and organizations must be rewarded, for it is there that most criminal justice system activity occurs, and it is there that we can have an influence. We must strive to be more than a service industry for a destructive crime control industry. Otherwise, we will get larger and larger, attracting more and more students, providing more and more jobs, and doing more and more harm.

An alternative to making criminal justice smaller and more focused on social justice would be to simply change the direction of criminal justice education by maintaining a strong social justice niche within the discipline. This approach would call for using alternative texts within our courses, such as *Social Justice*, *Criminal Justice*, *The Rich Get Richer and the Poor Get Prison*, *Justice Blind?*, or other similar books, and teaching from a planned change perspective. A handful of criminal justice scholars have worked to establish this niche and some critical books go into multiple editions, yet American criminal justice practice has grown in size and destructiveness. Criminal justice as an academic discipline is inherently pro status quo and serves as a portal to a larger and more destructive criminal justice system – more law enforcement and more prisons. Thus, it is time to force a smaller discipline, divorced from criminal justice, focused on social justice but interdisciplinary in approach.

There is now large agreement within our discipline that the criminal justice explosion over the past thirty years was not motivated by increasing crime rates and that it has not led to large decreases in crime rates; thus, it was not warranted. It is also clear that criminal justice activity is disproportionately affecting poor people of color, including a large number of who have committed relatively harmless crimes. We have concluded then, that our criminal justice system is unjust. As long as our main function is preparing students to fill criminal justice jobs rather than to bring about real change in criminal justice policy, injustice will continue to endure.

Some may argue that we can still have a great impact on criminal justice practice by turning out thousands of informed students each year who go to work in the criminal justice system. Perhaps these students can promote positive change from within. It is unlikely, however, that these students will cause changes in the get tough policies that created their jobs. Creating

positive change within the system to achieve social justice depends on those criminologists and criminal justices in the academy. It is up to us to bring about these changes.

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